

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 189 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

PRAKASH GANESH TANKARIA

Appearance:

MS MAYA DESAI for MR MD PANDYA for appellant
MR PRADEEP PATEL for Respondent No.1.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 04/07/2000

ORAL JUDGEMENT

1. This Second Appeal against the judgment and decree dated February 16, 1981 recorded in Regular Civil Appeal No. 105 of 1997 by the learned Assistant Judge, Junagadh, at the instance of defendant No.1 was admitted for hearing on the following substantial questions of

law:

"(1) Whether on the facts and in the circumstances of the case, the Court below misdirected itself in holding that non-examination of passengers of the bus, at the domestic enquiry amounted to violation of principles of natural justice and denial of reasonable opportunity to defend?

(2) Whether on the facts and in the circumstances of the case, when before the domestic Tribunal there was evidence of the officer of the checking squad relevant to the charge levelled and when guilt was held established on the basis thereof, the Civil Court is competent to reevaluate the evidence and record its independent findings?

(3) Whether in light of the judgment of the Hon'ble Supreme Court reported in AIR 1977 SC 1512, the decision of the Court below deserves to be set aside?"

2. The appellant is the original defendant No.1 whereas the respondent is the original plaintiff. They are hereinafter referred to in this judgment as 'the plaintiff' and 'the defendant' for the sake of convenience and brevity.

3. The facts giving rise to the present appeal may be summarised thus:

3.1. The plaintiff was serving as a conductor under the Divisional Controller, State Road Transport Corporation, Junagadh Division. While the plaintiff was serving as a conductor, he was given a memo of charge under letter No.784 dated January 21, 1972. The said charge was on the basis of the report of D.S.I., Junagadh alongwith paper dated January 11, 1972. After issuance of show cause notice dated June 10, 1972, the plaintiff came to be dismissed from the services by order dated June 30, 1972 which was communicated to him under endorsement No. 2751 dated June 30, 1972. Aggrieved thereby the plaintiff preferred departmental first appeal. The said appeal was dismissed by the Divisional Controller, State Road Transport Corporation, Junagadh Division, vide his letter dated August 21, 1972. The Departmental second appeal preferred by the plaintiff

also met with the same fate.

3.2. The plaintiff thereafter filed Regular Civil Suit No. 21 of 1974 in the Court of Civil Judge (S.D.), Junagadh wherein he claimed for a declaration that the dismissal order dated June 30, 1972 and subsequent orders passed in departmental appeals were void and that he is continued in service irrespective of the break caused in service on account of the order of dismissal passed against him, with full pay and allowances.

3.3. The suit was resisted by the defendant by filing written statement wherein, inter alia, it was contended that the suit was not tenable according to law. The relationship between the plaintiff and defendant was of a servant and master and, therefore, the plaintiff was not entitled to any relief as prayed for in view of the provisions of Section 14 of the Specific Reliefs Act. It was further contended that the Civil Court has no jurisdiction to hear the claim of the plaintiff. The suit was not maintainable in view of non-issuance of notice under Section 80 of the Civil Procedure Code. It was also further contended that the defendant - State Road Transport Corporation is not a 'State' within the meaning of Article 12 of the Constitution and the rules framed by the Corporation have no statutory force and since the plaintiff was not holding any civil post in connection with affairs of the State he is not entitled to protection of Article 311 of the Constitution. It was also further contended that the defendant was not an Industrial Corporation and the plaintiff was not a workman and hence permission of Labour Officer was not to be obtained by the defendant before passing the order of dismissal against the plaintiff. Lastly it was contended that the inquiry initiated against the plaintiff was according to law. The allegations were communicated to the plaintiff and he was given full opportunity to defend his case and thereafter the order of dismissal was passed. Since the charge levelled against the plaintiff was proved, the order of dismissal passed by the disciplinary authority which was confirmed in the departmental appeals by the concerned competent authorities was in accordance with law and cannot be interfered with in the suit filed by the plaintiff. Therefore, the defendant prayed for the dismissal of the suit.

3.4. The learned trial Judge framed issues, recorded evidence and after considering, appreciating and evaluating the same and after hearing the learned advocates for the parties, recorded the finding that the

plaintiff proved that the order of dismissal dated June 30, 1972 which was confirmed in departmental appeals was illegal and void and resultantly he recorded the decree in favour of the plaintiff by declaring the said order as null and void and by issuing direction to the defendant to pay all arrears of pay and emoluments from June 30, 1972 upto the date of filing of the suit and to reinstate the plaintiff in service from the said date onwards.

3.5. Aggrieved by the aforesaid judgment and decree the defendant Corporation went in appeal before the District Court of Junagadh by filing Regular Civil Appeal No. 105 of 1977. The learned Assistant Judge, Junagadh on reappreciation and reevaluation of the evidence and after considering the submissions advanced at the bar by the learned advocates for the parties, affirmed the judgment and decree recorded by the learned trial Judge by dismissing the appeal. It is this judgment and decree whereby concurrent finding of facts have been recorded by both the courts below which is under challenge in this Second Appeal at the instance of the defendant on the substantial questions of law to which reference has been made in the earlier part of this judgment.

4. Ms. Desai, learned advocate for the appellant, contended that the learned trial Judge as well as the learned lower appellate Judge both misdirected themselves in holding that non-examination of the passengers of the bus at the domestic inquiry amounted to violation of principles of natural justice and denial of reasonable opportunity to the plaintiff to defend his case. She further contended that the plaintiff/delinquent was given full opportunity to defend his case at domestic inquiry. The plaintiff was permitted to cross-examine the witnesses and he had also cross-examined the reporter. She, therefore, contended that it cannot be said that the plaintiff was not given reasonable opportunity to defend his case. So far as the charge levelled against the plaintiff is concerned, she contended that it was duly proved at the domestic inquiry. She further contended that looking to the past conduct of the plaintiff it is evident that he was held guilty in respect of monetary matters i.e., non-issuance of tickets after collecting fare from passengers, which cannot be taken leniently and, therefore, he was removed from service by way of major penalty. She further contended that since there was evidence of the officer of the checking squad relating to the charge levelled against the plaintiff and as the guilt of the plaintiff was held established, the Civil Court was not competent to reevaluate the evidence and record its independent finding in view of catena of

decisions of the Supreme Court as well as this Court. She stressed that there is no rule to the effect that non-examination of the passengers in the bus at domestic inquiry would amount to violation of principles of natural justice in view of the decision of the Apex Court in the case of State of Haryana and another v. Rattan Singh, AIR 1977 SC 1512. She further maintained that both the courts below have misdirected themselves on this aspect and in view of the settled principles of law in the case of State of Haryana (supra) the judgment and decree recorded by the trial court which is affirmed by the lower appellate court by dismissing the appeal is required to be set aside by allowing this appeal and thereby dismissing the suit filed by the plaintiff.

5. In counter submission, Mr. Patel contended that it is true that the findings arrived at at the domestic inquiry normally cannot be assailed in civil suit since Civil Court is not competent to reevaluate the evidence on record and record independent finding. However, there is an exception to this rule. If the departmental inquiry itself is vitiated, then, naturally the Civil Court is not powerless and it can definitely interfere with the finding recorded at the departmental inquiry. It was also stressed by him that so far as the instant case is concerned, notwithstanding the fact that the statements of the two passengers from whom the plaintiff had allegedly collected fare but not issued tickets were recorded, they have not been examined inspite of the demand made by the plaintiff and this would amount to violation of principles of natural justice. He also maintained that the Supreme Court in the judgment rendered in the case of State of Haryana (supra) does not lay down any absolute proposition of law that in all cases at the departmental inquiry passengers from whom fare was allegedly collected by the conductor need not be examined at the inquiry proceeding. The charge against the conductor was that of collecting fares from them and not issuing tickets to them. It was also maintained by him that in the instant case, by not examining those two passengers whose statements were recorded in his presence, the plaintiff was denied opportunity to cross-examine them and thereby the principles of natural justice were violated which vitiated the departmental inquiry itself and, therefore, both the courts below were right in holding that non-examination of those two passengers was fatal to the departmental proceedings and resultantly the trial court rightly recorded the decree by declaring the said departmental inquiry as null and void and consequential relief of reinstatement was granted and direction to pay full backwages was issued

and this judgment and decree came to be affirmed by the lower appellate court which may not be interfered with in this Second Appeal where the scope is very limited and hence he prayed to dismiss the appeal.

6. At the outset it may be appreciated that it was alleged against the plaintiff in the charge-sheet that on January 8, 1972 while discharging his duties as a conductor he was in charge of the Bus No. 4201 on Dwarka-Porbandar route. The said bus was intercepted by the checking squad and during the checking it was found that the plaintiff had not issued ticket to a passenger travelling from Khambhodar to Babra despite collection of fare from him. It was also alleged against him that he had not issued ticket to a passenger travelling from Majivana to Bharvada despite collecting fare from him. Pursuant to the said allegation, the checking squad had recorded statements of those two passengers and also the statement of the plaintiff which was followed by issuance of charge-sheet in due compliance of the requirements of Section 5 (b) of the Discipline & Appeal Procedure for the Gujarat State Road Transport Employees, read with Schedule E (i). The plaintiff filed his written objections to it and maintained that the concerned passengers should also be examined at the domestic inquiry and he should be given an opportunity to cross-examine them. The inquiry was conducted, evidence of a member of the checking squad was recorded and the plaintiff was allowed to cross-examine the said witness and the competent officer having found the charge established against the plaintiff issued show cause notice for imposition of major penalty. The plaintiff replied to the said show cause notice and thereafter vide order dated June 30, 1972 he was dismissed from the service. The plaintiff filed departmental first appeal and on dismissal of the same filed departmental second appeal before the competent authority which also met with the same fate. The said order of dismissal has given rise to the present litigation.

7. Now let us examine the first contention advanced by Ms. Desai, learned advocate for the defendant, that non-examination of passengers in the bus at the domestic inquiry would not amount to violation of principles of natural justice and denial of reasonable opportunity to the plaintiff to defend his case. According to her, it was not necessary to examine the passengers travelling in the bus from whom the plaintiff had allegedly collected fare but not issued tickets in view of the binding ruling of the Supreme Court in the case of State of Haryana (supra). In that case it was held by the Supreme Court

that at domestic inquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hear-say evidence provided it has reasonable nexus and credibility. The departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. It was further contended that sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record.

8. In the case before the Supreme Court a bus conductor of a State Transport Undertaking was charge-sheeted for not collecting fares from certain passengers and on his guilt being established there was simple termination of his services because of his long services and young age. In that case it was held that it could not be said that merely because statements of passengers were not recorded by the Inspector of the flying squad the order that followed was invalid. The evidence of the Inspector was some evidence which had relevance to the charge against the bus conductor and hence the order of simple termination of services was valid. It is true that the Supreme Court in the aforesaid ruling does not lay down an invariable rule that passengers of the bus in such cases need never be examined at the inquiry proceeding charging the conductor of misconduct of having collected fare from them and not issued tickets to them. It is equally true as to whether or not such passengers are required to be examined at the inquiry proceeding would depend on the facts and circumstances of each case.

9. Applying the aforesaid principles to the facts of the present case, if we examine the case on hand, the plaintiff was charge-sheeted for non-issuance of tickets to two passengers though he had collected fare from them. Besides, he also allowed five passengers to travel in the bus without issuing tickets and without collecting fare from them. It may be appreciated that the statements of two passengers from whom fare was collected but tickets were not issued were recorded with regard to first two charges whereas the statements of five passengers whom were allegedly permitted by the plaintiff to travel in the bus from Bhagvada to Porbandar were not recorded. The two passengers whose statements were recorded were

not examined inspite of the specific demand made by the plaintiff in the written objections filed by him against the show cause notice. Inspite of specific demand made by the plaintiff, the two passengers whose statements were recorded and signatures were obtained at the time of checking in presence of the plaintiff were not allowed to be cross-examined by the plaintiff during the domestic inquiry and this will surely amount to denial of reasonable opportunity to defend, which is required to be given during the inquiry proceedings.

10. Ms. Desai further contended that so far as the ratio laid down by the Apex Court in the judgment rendered in the case of State of Haryana (supra) it does not lay down an absolute proposition of law that in all cases passengers of the bus need not be examined in the proceedings against the conductor for proving the charge of collection of fare from them and not issuing tickets to them. What is emphasised by her is that so far as the instant case is concerned, both the courts below have only examined the departmental inquiry from the point of view of cross-examination of two passengers. In that view of the matter runs the further submission that there is no error pointed out in the impugned judgment that at the departmental inquiry principles of natural justice were violated. It is emphatically submitted that it was not open for the trial court to reevaluate the evidence and record its independent finding contrary to the finding arrived at in the domestic inquiry since there was ample evidence of the officer of the checking squad relevant to the charge levelled against the plaintiff and the guilt was established on the basis thereof.

11. The aforesaid submission of Ms. Desai is not well founded. At the cost of repetition it may be pointed out that the judgment of the Supreme Court in State of Haryana (supra) which is pressed into service is distinguishable as it does not lay down any absolute proposition of law. In the case before the Supreme Court, the statements of passengers were not recorded and in that set of circumstances the Supreme Court ruled that it cannot be said that merely because the statements of the passengers were not recorded by the Inspector of flying squad the order that followed was invalid. So far as the case on hand is concerned, admittedly the statements of passengers were recorded. A demand was also made by the plaintiff to cross-examine them. Inspite of that the plaintiff was not allowed to cross-examine them and thereby vitiated the departmental inquiry as principles of natural justice were not followed.

12. At this stage it would be appropriate to refer to the judgment of the Supreme Court in the case of Jagdish Prasad Saxena v. The State of Madhya Bharat (now Madhya Pradesh), reported in AIR 1961 SC 1070 wherein the Supreme Court has ruled:

"The departmental inquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet with the charge and to prove his innocence. In absence of any such inquiry, it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the inquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services."

13. In light of the aforesaid principles, reverting to the case on hand, there is no evidence of passengers whose statements were recorded and to whom the tickets were not allegedly issued by the plaintiff after collecting fare. It was pointed out by the learned counsel for the defendant that during the departmental appeal proceedings the plaintiff had admitted guilt and prayed that mercy may be shown. According to her, in that view of the matter also the charges levelled against the plaintiff were proved and, therefore, it was not open for the learned trial Judge to appreciate the evidence recorded during the departmental inquiry proceedings. The aforesaid submission is also fallacious. There is no iota of evidence that the plaintiff had admitted his guilt. It is true that while making his submissions before the appellate authority he had prayed with folded hands to reduce the punishment and by no stretch of imagination the request made by the plaintiff can be said to be an admission of guilt on his part.

14. In view of the aforesaid discussion, I am of the opinion that the learned trial Judge has very rightly appreciated the evidence and very rightly recorded the conclusion that the non-examination of two passengers vitiated the departmental inquiry. The said finding of the trial court is affirmed by the lower appellate court and once it is established that principles of natural justice were violated Civil Court is competent to hold that the departmental inquiry is vitiated. Therefore, the substantial questions formulated by this Court are answered in the negative and against the

appellant/defendant.

15. Now this takes me to the last contention as to whether the plaintiff is entitled to the award of consequential relief, i.e., continuity of service throughout with full pay and allowances and also for the award of arrears of salary from the date of dismissal i.e., June 30, 1972 till date of filing of the suit. In this regard, Ms. Desai contended that so far as awarding of backwages is concerned, there is no evidence adduced on record by the plaintiff and it is not even pleaded in unequivocal terms by him before the trial court. She, therefore, submitted that that part of decree granting all consequential relief including full backwages is required to be interfered with. In support of her aforesaid submission, she placed reliance on the judgment of the Supreme Court in the case of State of Madhya Pradesh v. Mangilal Sharma, AIR 1998 SC 743. In the said judgment, the Supreme Court held that while granting the relief of declaration claimed as to the employee being in continuance of service, consequential reliefs as to arrears of salary and interest on arrears not claimed in the suit cannot be granted. In light of the ratio laid down in the aforesaid judgment there is no manner of doubt that in the instant case the plaintiff had claimed specific relief in terms of para 8 (a) wherein he had sought for a declaration that the impugned order of dismissal is void and he still continues in service irrespective of break in service with full pay and allowances. The plaintiff also claimed Rs.3400/- roughly by way of loss of salary from the date of dismissal till the date of filing of the suit and the trial court granted the decree for all the reliefs and the lower appellate court confirmed it. Therefore, in my view, the judgment relied upon by Ms. Desai is of no avail or assistance to the case propounded by her that the plaintiff was not entitled to consequential reliefs including backwages, etc.

16. It is a settled proposition of law that normally in service matters, when order of reinstatement is passed, backwages are to follow unless there is evidence to the effect that the concerned employee was gainfully employed elsewhere between the date of removal from service till reinstatement in service. In the instant case, the plaintiff was removed from service in the year 1972 and though the trial court had passed decree in his favour because of the pendency of litigation he was not reinstated. In these circumstances, I am of the opinion that instead of awarding consequential relief including full backwages as awarded by the trial court and

confirmed by the lower appellate court if 50% backwages are awarded, the same would meet the ends of justice.

17. In the net result, the substantial questions of law formulated by this court are answered in negative and against the appellant/defendant and the judgment and decree passed by the trial court and affirmed by the lower appellate court is confirmed and maintained subject to the modification that the plaintiff is entitled to 50% backwages instead of full backwages as awarded by the trial court. The appeal, therefore, fails and is dismissed. No order as to costs. Interim relief granted at the time of admission of the appeal is vacated.

18. At this stage, Ms. Desai, learned advocate for the appellant, submitted that the judgment and decree passed by the trial court is stayed till today and the appellant intends to approach higher forum against this judgment and, therefore, she prayed that the judgment and decree may be stayed for a further period of six weeks from today to enable her to approach the higher forum. In the facts and circumstances of the case, her prayer is granted. Accordingly, the decree recorded by the trial court with regard to reinstatement and backwages which is confirmed by the lower appellate court and as modified by this court is stayed for a further period of six weeks hereof.

4.7.2000. (A.M. Kapadia, J.)

(karan)